

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on January 24, 2002 in Room 313-S of the Capitol.

All members were present except:

Representative Nile Dillmore - Excused
Representative Tom Klein - Excused
Representative Dean Newton - Excused
Representative Jan Pauls - Excused
Representative Rick Rehorn - Excused
Representative Candy Ruff - Excused

Committee staff present:

Jill Wolters, Department of Revisor of Statutes
Sherman Parks, Department of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Janet Schalansky, Secretary, Kansas Department of Social and Rehabilitation Services

Secretary Janet Schalansky appeared before the committee with three bill requests. The first would add the State Security Hospital to the definition of a criminal justice agency. The second would strengthen the language in current statute to simplify the process for recovering public-paid medical expenses from a recipient's estate. The last would allow certain extremely ill or physically or mentally incapacitated persons to be considered for transfer out of the sexual predator treatment program to a more appropriate setting. (Attachment 1)

Representative Shriver made the motion to have the requests introduced as committee bills. Representative Howell seconded the motion. The motion carried.

The committee meeting adjourned at 3:50 p.m. The next meeting was scheduled for January 28, 2002.



KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

January 24, 2002

Representative Michael R. O'Neal, Chair
House Judiciary Committee
Room 170-W, Statehouse
Topeka, Kansas 66612

Dear Chairman O'Neal:

I would like to request the introduction of three legislative proposals. The first of these contains statutory changes that would add the State Security Hospital to the definition of a criminal justice agency. This would allow access to the Kansas Bureau of Investigation's criminal history record information and to the federal National Crime Information Center records.

The second proposal is designed to strengthen the language in current statutes to help simplify the process for recovering public-paid medical expenses from a recipient's estate. This proposal would impose a lien on the real property of a recipient of medical assistance. The lien would be imposed primarily on medical assistance recipients who have been in long-term care for one year or more.

The third proposal would allow certain extremely ill or physically or mentally incapacitated persons to be considered for transfer out of the sexual predator treatment program at the Larned State Hospital to a more appropriate setting.

I appreciate your Committee's introduction of these bills, and will be glad to testify or provide additional information as requested.

Sincerely,

A handwritten signature in blue ink that reads "Janet Schalansky".

Janet Schalansky, Secretary

cc: Jerry Ann Donaldson, KLRD
Mike Heim, KLRD
Sherman Parks Jr., Revisor of Statutes Office
Jill Wolters, Revisor of Statutes Office

By

AN ACT concerning criminal procedure; relating to criminal history record information; adding the state security hospital to the definition of criminal justice agency; amending K.S.A. 2001 Supp. 22-4701 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 22-4701 is hereby amended to read as follows: 22-4701. As used in this act, unless the context clearly requires otherwise:

(a) "Central repository" means the criminal justice information system central repository created by this act and the juvenile offender information system created pursuant to K.S.A. 38-1618, and amendments thereto.

(b) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) wanted posters, police blotter entries, court records of public judicial proceedings or published court opinions;

(3) data pertaining to violations of the traffic laws of the state or any other traffic law or ordinance, other than vehicular homicide; or

(4) presentence investigation and other reports prepared for use by a court in the exercise of criminal jurisdiction or by the governor in the exercise of the power of pardon, reprieve or commutation.

(c) "Criminal justice agency" means any government agency or subdivision of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation or release of persons suspected, charged or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions. The term includes, but is not limited to, the following agencies, when exercising jurisdiction over criminal

matters or criminal history record information:

(1) State, county, municipal and railroad police departments, sheriffs' offices and countywide law enforcement agencies, correctional facilities, jails and, detention centers and the state security hospital at Larned;

(2) the offices of the attorney general, county or district attorneys and any other office in which are located persons authorized by law to prosecute persons accused of criminal offenses;

(3) the district courts, the court of appeals, the supreme court, the municipal courts and the offices of the clerks of these courts;

(4) the Kansas sentencing commission;

(5) the Kansas parole board; and

(6) the juvenile justice authority.

(d) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements and personnel used in the collection, processing, preservation and dissemination of criminal history record information.

(e) "Director" means the director of the Kansas bureau of investigation.

(f) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

(1) The transmittal of such information within a criminal justice agency;

(2) the reporting of such information as required by this act; or

(3) the transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(g) "Reportable event" means an event specified or provided for in K.S.A. 22-4705, and amendments thereto.

Sec. 2. K.S.A. 2001 Supp. 22-4701 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

By

AN ACT concerning medical assistance; concerning the repayment thereof; creating and imposing a lien on real property of certain recipients of medical assistance; making certain transfers of property voidable; amending K.S.A. 39-709 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 39-709 is hereby amended to read as follows: 39-709. (a) General eligibility requirements for assistance for which federal moneys are expended. Subject to the additional requirements below, assistance in accordance with plans under which federal moneys are expended may be granted to any needy person who:

(1) Has insufficient income or resources to provide a reasonable subsistence compatible with decency and health. Where a husband and wife are living together, the combined income or resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary, in determining need of any applicant for or recipient of assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or minor stepchild if the stepchild is living with such individual. The secretary in determining need of an individual may provide such income and resource exemptions as may be permitted by federal law. For purposes of eligibility for aid for families with dependent children, for food stamp assistance and for any other assistance provided through the department of social and rehabilitation services under which federal moneys are expended, the secretary of social and rehabilitation services shall consider one motor vehicle owned by the applicant for assistance, regardless of the value of such vehicle, as exempt personal property and shall consider any equity in any additional motor vehicle owned by the applicant for assistance to be a nonexempt resource of the applicant for assistance.

(2) Is a citizen of the United States or is an alien lawfully admitted to the United States and who is residing in the state of Kansas.

(b) Assistance to families with dependent children. Assistance may be granted under this act to any dependent child, or relative, subject to the general eligibility requirements as set out in subsection (a), who resides in the state of Kansas or whose parent or other relative with whom the child is living resides in the state of Kansas. Such assistance shall be known as aid to families with dependent children. Where husband and wife are living together both shall register for work under the program requirements for aid to families with dependent children in accordance with criteria and guidelines prescribed by rules and regulations of the secretary.

(c) Aid to families with dependent children; assignment of support rights and limited power of attorney. By applying for or receiving aid to families with dependent children such applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. In any case in which an order for child support has been established and the legal custodian and obligee under the order surrenders physical custody of the child to a caretaker relative without obtaining a modification of legal custody and support rights on behalf of the child are assigned pursuant to this section, the surrender of physical custody and the assignment shall transfer, by operation of law, the child's support rights under the order to the secretary on behalf of the state. Such assignment shall be of all accrued, present or future rights to support of the child surrendered to the caretaker relative. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant, recipient or obligee. By

applying for or receiving aid to families with dependent children, or by surrendering physical custody of a child to a caretaker relative who is an applicant or recipient of such assistance on the child's behalf, the applicant, recipient or obligee is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full.

(d) Eligibility requirements for general assistance, the cost of which is not shared by the federal government. (1) General assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d).

(A) To qualify for general assistance in any form a needy person must have insufficient income or resources to provide a reasonable subsistence compatible with decency and health and, except as provided for transitional assistance, be a member of a family in which a minor child or a pregnant woman resides or be unable to engage in employment. The secretary shall adopt rules and regulations prescribing criteria for establishing when a minor child may be considered to be living with a family and whether a person is able to engage in employment, including such factors as age or physical or mental condition. Eligibility for general assistance, other than transitional assistance, is limited to families in which a minor child or a pregnant woman resides or to an adult or family in which all legally responsible family members are unable to engage in employment. Where a husband and wife are living together the combined income or

resources of both shall be considered in determining the eligibility of either or both for such assistance unless otherwise prohibited by law. The secretary in determining need of any applicant for or recipient of general assistance shall not take into account the financial responsibility of any individual for any applicant or recipient of general assistance unless such applicant or recipient is such individual's spouse or such individual's minor child or a minor stepchild if the stepchild is living with such individual. In determining the need of an individual, the secretary may provide for income and resource exemptions.

(B) To qualify for general assistance in any form a needy person must be a citizen of the United States or an alien lawfully admitted to the United States and must be residing in the state of Kansas.

(2) General assistance in the form of transitional assistance may be granted to eligible persons who do not qualify for financial assistance in a program in which the federal government participates and who satisfy the additional requirements prescribed by or under this subsection (d), but who do not meet the criteria prescribed by rules and regulations of the secretary relating to inability to engage in employment or are not a member of a family in which a minor or a pregnant woman resides.

(3) In addition to the other requirements prescribed under this subsection (d), the secretary shall adopt rules and regulations which establish community work experience program requirements for eligibility for the receipt of general assistance in any form and which establish penalties to be imposed when a work assignment under a community work experience program requirement is not completed without good cause. The secretary may adopt rules and regulations establishing exemptions from any such community work experience program requirements. A first time failure to complete such a work assignment requirement shall result in ineligibility to receive general assistance for a

period fixed by such rules and regulations of not more than three calendar months. A subsequent failure to complete such a work assignment requirement shall result in a period fixed by such rules and regulations of ineligibility of not more than six calendar months.

(4) If any person is found guilty of the crime of theft under the provisions of K.S.A. 39-720, and amendments thereto, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the provisions of K.S.A. 39-720; and amendments thereto, or the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the provisions of such statute shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction. If any person is found guilty by a court of competent jurisdiction of any state other than the state of Kansas of a crime involving welfare fraud, such person shall thereby become forever ineligible to receive any form of general assistance under the provisions of this subsection (d) unless the conviction is the person's first conviction under the law of any other state concerning welfare fraud. First time offenders convicted of a misdemeanor under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 12 calendar months from the date of conviction. First time offenders convicted of a felony under the law of any other state concerning welfare fraud shall become ineligible to receive any form of general assistance for a period of 60 calendar months from the date of conviction.

(e) Requirements for medical assistance for which federal moneys or state moneys or both are expended. When the secretary

has adopted a medical care plan under which federal moneys or state moneys or both are expended, medical assistance in accordance with such plan shall be granted to any person who is a citizen of the United States or who is an alien lawfully admitted to the United States and who is residing in the state of Kansas, whose resources and income do not exceed the levels prescribed by the secretary. In determining the need of an individual, the secretary may provide for income and resource exemptions and protected income and resource levels. Resources from inheritance shall be counted. A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and amendments thereto, shall constitute a transfer of resources. The secretary shall exempt principal and interest held in irrevocable trust pursuant to subsection (c) of K.S.A. 16-303, and amendments thereto, from the eligibility requirements of applicants for and recipients of medical assistance. Such assistance shall be known as medical assistance.

(f) Eligibility for medical assistance of resident receiving medical care outside state. A person who is receiving medical care including long-term care outside of Kansas whose health would be endangered by the postponement of medical care until return to the state or by travel to return to Kansas, may be determined eligible for medical assistance if such individual is a resident of Kansas and all other eligibility factors are met. Persons who are receiving medical care on an ongoing basis in a long-term medical care facility in a state other than Kansas and who do not return to a care facility in Kansas when they are able to do so, shall no longer be eligible to receive assistance in Kansas unless such medical care is not available in a comparable facility or program providing such medical care in Kansas. For persons who are minors or who are under guardianship, the actions of the parent or guardian shall be deemed to be the actions of the child or ward in determining whether or not the person is remaining outside the state voluntarily.

(g) Medical assistance; assignment of rights to medical support and limited power of attorney; recovery from estates of

deceased recipients. (1) Except as otherwise provided in K.S.A. 39-786 and 39-787, and amendments thereto, or as otherwise authorized on and after September 30, 1989, under section 303 and amendments thereto of the federal medicare catastrophic coverage act of 1988, whichever is applicable, by applying for or receiving medical assistance under a medical care plan in which federal funds are expended, any accrued, present or future rights to support and any rights to payment for medical care from a third party of an applicant or recipient and any other family member for whom the applicant is applying shall be deemed to have been assigned to the secretary on behalf of the state. The assignment shall automatically become effective upon the date of approval for such assistance without the requirement that any document be signed by the applicant or recipient. By applying for or receiving medical assistance the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments, representing payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for assistance and shall remain in effect until the assignment has been terminated in full. The assignment of any rights to payment for medical care from a third party under this subsection shall not prohibit a health care provider from directly billing an insurance carrier for services rendered if the provider has not submitted a claim covering such services to the secretary for payment. Support amounts collected on behalf of persons whose rights to support are assigned to the secretary only under this subsection and no other shall be distributed pursuant to subsection (d) of K.S.A. 39-756, and amendments thereto, except that any amounts designated as medical support shall be retained by the secretary for repayment of the unreimbursed portion of assistance. Amounts collected pursuant to

the assignment of rights to payment for medical care from a third party shall also be retained by the secretary for repayment of the unreimbursed portion of assistance.

(2) The amount of any medical assistance paid after June 30, 1992, under the provisions of subsection (e) is (A) a claim against the property or any interest therein belonging to and a part of the estate of any deceased recipient or, if there is no estate, the estate of the surviving spouse, if any, shall be charged for such medical assistance paid to either or both, and (B) a claim against any funds of such recipient or spouse in any account under K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and amendments thereto. There shall be no recovery of medical assistance correctly paid to or on behalf of an individual under subsection (e) except after the death of the surviving spouse of the individual, if any, and only at a time when the individual has no surviving child who is under 21 years of age or is blind or permanently and totally disabled. Transfers of real or personal property by recipients of medical assistance without adequate consideration are voidable and may be set aside. Except where there is a surviving spouse, or a surviving child who is under 21 years of age or is blind or permanently and totally disabled, the amount of any medical assistance paid under subsection (e) is a claim against the estate in any guardianship or conservatorship proceeding. The monetary value of any benefits received by the recipient of such medical assistance under long-term care insurance, as defined by K.S.A. 40-2227, and amendments thereto, shall be a credit against the amount of the claim provided for such medical assistance under this subsection (g). The secretary is authorized to enforce each claim provided for under this subsection (g). The secretary shall not be required to pursue every claim, but is granted discretion to determine which claims to pursue. All moneys received by the secretary from claims under this subsection (g) shall be deposited in the social welfare fund. The secretary may adopt rules and regulations for the implementation and administration

of the medical assistance recovery program under this subsection (g).

(3) The secretary of social and rehabilitation services or the secretary's designee is authorized to file and enforce a lien against the real property of a recipient of medical assistance in certain situations. This lien is for payments of medical assistance made by the department of social and rehabilitation services to the recipient who is an inpatient in a nursing home or other medical institution. Such lien may be filed only after notice and an opportunity for a hearing has been given. Such lien may be enforced only upon competent medical testimony that the recipient cannot reasonably be expected to be discharged and returned home. A one-year period of compensated inpatient care at a nursing home, nursing homes or other medical institution shall constitute a determination by the department of social and rehabilitation services that the recipient cannot reasonably be expected to be discharged and returned home. To return home means the recipient leaves the nursing or medical facility and resides in the home on which the lien has been placed for a period of at least 90 days without being readmitted as an inpatient to a nursing or medical facility. The amount of the lien shall be for the amount of assistance paid by the department of social and rehabilitation services after the expiration of one year from the date the recipient became eligible for compensated inpatient care at a nursing home, nursing homes or other medical institution until the time of the filing of the lien and for any amount paid thereafter for such medical assistance to the recipient.

(4) The lien filed by the secretary or the secretary's designee for medical assistance correctly received may be enforced before or after the death of the recipient. However, it may be enforced only:

(A) After the death of the surviving spouse of the recipient;

(B) when there is no child of the recipient, natural or

adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the recipient, natural or adopted, who is blind or disabled residing in the home; or

(D) when no brother or sister of the recipient is lawfully residing in the home, who has resided there for at least one year immediately before the date of the recipient's admission to the nursing or medical facility, and has resided there on a continuous basis since that time.

(5) The lien remains on the property even after a transfer of the title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The recipient, the heirs, personal representative or assigns of the recipient may discharge such lien at any time by paying the amount of the lien to the secretary or the secretary's designee;

(B) the value of the real property is consumed by the lien, at which time the secretary or the secretary's designee may force the sale for the real property to satisfy the lien; or

(C) after a lien is filed against the real property, it will be dissolved if the recipient leaves the nursing or medical facility and resides in the property to which the lien is attached for a period of more than 90 days without being readmitted as an inpatient to a nursing or medical facility, even though there may have been no reasonable expectation that this would occur. If the recipient is readmitted to a nursing or medical facility during this period, and does return home after being released, another 90 days must be completed before the lien can be dissolved.

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(h) Placement under code for care of children or juvenile offenders code; assignment of support rights and limited power of attorney. In any case in which the secretary of social and rehabilitation services pays for the expenses of care and custody of a child pursuant to K.S.A. 38-1501 et seq. or 38-1601 et seq., and amendments thereto, including the expenses of any foster care placement; an assignment of all past, present and future support

rights of the child in custody possessed by either parent or other person entitled to receive support payments for the child is, by operation of law, conveyed to the secretary. Such assignment shall become effective upon placement of a child in the custody of the secretary or upon payment of the expenses of care and custody of a child by the secretary without the requirement that any document be signed by the parent or other person entitled to receive support payments for the child. When the secretary pays for the expenses of care and custody of a child or a child is placed in the custody of the secretary, the parent or other person entitled to receive support payments for the child is also deemed to have appointed the secretary, or the secretary's designee, as attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary on behalf of the child. This limited power of attorney shall be effective from the date the assignment to support rights becomes effective and shall remain in effect until the assignment of support rights has been terminated in full.

(i) No person who voluntarily quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations of the secretary or who is a fugitive from justice by reason of a felony conviction or charge shall be eligible to receive public assistance benefits in this state. Any recipient of public assistance who fails to timely comply with monthly reporting requirements under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations.

(j) If the applicant or recipient of aid to families with dependent children is a mother of the dependent child, as a condition of the mother's eligibility for aid to families with dependent children the mother shall identify by name and, if known, by current address the father of the dependent child

except that the secretary may adopt by rules and regulations exceptions to this requirement in cases of undue hardship. Any recipient of aid to families with dependent children who fails to cooperate with requirements relating to child support enforcement under criteria and guidelines prescribed by rules and regulations of the secretary shall be subject to a penalty established by the secretary by rules and regulations which penalty shall progress to ineligibility for the family after three months of noncooperation.

(k) By applying for or receiving child care benefits or food stamps, the applicant or recipient shall be deemed to have assigned, pursuant to K.S.A. 39-756 and amendments thereto, to the secretary on behalf of the state only accrued, present or future rights to support from any other person such applicant may have in such person's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. The assignment of support rights shall automatically become effective upon the date of approval for or receipt of such aid without the requirement that any document be signed by the applicant or recipient. By applying for or receiving child care benefits or food stamps, the applicant or recipient is also deemed to have appointed the secretary, or the secretary's designee, as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person applying for, receiving or having received such assistance. This limited power of attorney shall be effective from the date the secretary approves the application for aid and shall remain in effect until the assignment of support rights has been terminated in full. An applicant or recipient who has assigned support rights to the secretary pursuant to this subsection shall cooperate in establishing and enforcing support obligations to the same extent required of applicants for or recipients of aid to families with dependent children.

Sec. 2. K.S.A. 39-709 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

By

AN ACT concerning the secretary of social and rehabilitation services; relating to persons in the sexual predator treatment program at the Larned state hospital; allowing certain extremely ill or physically or mentally incapacitated persons to be considered for transfer; annual review by the court; amending K.S.A. 2001 Supp. 59-29a08, 59-29a10 and 59-29a18 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2001 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder or other circumstances, including deterioration of the person's physical health, has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled

to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder or other circumstances remains such that the person is not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(c) If, after the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(d) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the such transitional release program or services as the secretary may have, find or develop for that person. ~~The secretary may contract for services to be provided in the transitional release program.~~ During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(e) The secretary may contract for services to be provided to any person transferred to transitional release. At the request of the secretary, the board of county commissioners for the county in which the person was committed for treatment under this act shall assist the secretary in securing such services.

(e)(f) At any time during which the person is in the

transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(f)(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

Sec. 2. K.S.A. 2001 Supp. 59-29a10 is hereby amended to read as follows: 59-29a10. (a) Whenever the secretary of social and rehabilitation services deems it appropriate to do so, or whenever requested by the treatment staff, the secretary shall convene a multi-disciplinary team of professionals, which may also include individuals representing the attorney general, the secretary of corrections and the Kansas parole board, but shall

not include any individual who is then a member of the treatment staff providing treatment to the person, who shall review the person's progress in treatment. Based thereon, and considering the available resources which might be applicable to the person, and such other factors as the team determines appropriate, the team shall recommend to the secretary whether the secretary should authorize the person to petition the court for transitional release.

(a)(b) If the secretary of ~~the department of social and rehabilitation services~~ determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if placed in transitional release, or that for other circumstances, including deterioration of the person's physical health, that the person is not likely to commit predatory acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for transitional release, shall order a hearing within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder or other circumstances remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to commit predatory acts of sexual violence.

(b)(c) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e)(d) The provisions of subsections (d), (e) and (f) of K.S.A. 59-29a08 and amendments thereto shall apply to a transitional release pursuant to this section.

Sec. 3. K.S.A. 2001 Supp. 59-29a18 is hereby amended to read as follows: 59-29a18. (a) During any period the person is in transitional release, the person committed under this act at least annually, and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff, or by such other multi-disciplinary team of professionals as the secretary of social and rehabilitation services deems appropriate, to determine if the person's mental abnormality or personality disorder, or other circumstances, including the person's physical health, has so changed so as to warrant such person being considered for conditional release. The treatment staff or multi-disciplinary team shall forward a report of its examination and findings to the court. The court shall review the same. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed, or other circumstances, including deterioration of the person's physical health, that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder, or other circumstances, remains such that the person is not safe to be at large and that if placed on conditional release is likely to engage in repeat acts of sexual violence. The person shall have the same rights as enumerated in K.S.A. 59-29a06 and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain

either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

Sec. 4. K.S.A. 2001 Supp. 59-29a08, 59-29a10 and 59-29a18 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.